Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000332-001 DT 10/04/2011

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
H. Beal
Deputy

RANCHERIA M H P LLC

MICHAEL A PARHAM

v.

MARIA ROMERO (001)

THOMAS H LEAVELL

ARCADIA BILTMORE JUSTICE COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No. CC2010543876FD

Defendant Appellant Maria Romero (Defendant) appeals the Arcadia Biltmore Justice Court's determination that she is guilty of a forcible detainer. Defendant contends the trial court erred. For the reasons stated below, the court affirms the trial court's judgment.

I. FACTUAL BACKGROUND.

Defendant occupies a trailer space at Plaintiff's mobile home park. The action began because Defendant allegedly refused to allow Plaintiff to install a water meter at Defendant's rental space where a locked gate prevented Plaintiff from gaining access. According to Defendant, the gate was locked when she purchased the mobile home and the lock was owned by SRP. The parties disputed when and where Defendant was told about the need to access the property and whether Plaintiff had the ability to enter the property to install the water meter. The Court held a trial on November 24, 2010.[1]

At trial Plaintiff established Defendant had seen a copy of Plaintiff's Exhibit 1[2] This Exhibit is a notice addressed to "Residents of Grandview Mobile Home Park" dated September 1, 2010. The notice informs the residents the mobile home park will begin charging separately for water and sewage use effective December 1, 2010. The notice is written in both Spanish and English.

[1] Audio Recording of November 24, 2010, Discs 1 and 2.
[2] *Id*. at Disc 1 at 25:50.

Plaintiff maintained Defendant refused to allow it access to install a water meter on the rental property. Isaac Garcia, the property manager, testified about his encounter with Defendant and stated he spoke with her on a Sunday night and told her of the need to install a water meter. He stated Defendant told him she would not allow him to place a water meter on the property because he did not have a court order for this.[3] He also said he told Defendant he did not need a court order to install the meter but he did invite her to come to his office to further discuss the matter. Mr. Garcia maintained Defendant has never come to discuss the matter with him[4] and also stated Defendant told him she would not allow him access to the property.[5] Mr. Garcia noticed a lock on the gate and stated he assumed the lock belonged to Defendant.[6] After learning the lock belonged to SRP, he contacted SRP who removed the lock.[7]

Defendant testified and stated she participated in filing a complaint against Plaintiff.[8] She admitted she knew Plaintiff had the right to go on the property to engage in repairs or maintenance.[9] She stated the property manager never gave her notice[10] and denied that either Mr. Isaac Garcia[11] or Mr. Tom Garcia[12] contacted her. She testified she is seldom at the property and leaves on Sunday at 6:00 P.M. so Mr. Garcia could not have contacted her at night. She stated her husband pays the rent and handles financial transactions.[13] On redirect, Defendant admitted she had the ability to remove the lock but said Plaintiff never asked her to take the lock off.[14]

Mr. Tom Garcia, the property manager's son, worked as a maintenance man at the property. He testified about his conversations with Defendant's husband. Mr. Tom Garcia stated he asked if he could get a key to unlock the gate and was told he could not go in because he would "need a piece of paper to put the water in."[15] He also testified he asked Defendant's husband to unlock the gate but his request was refused.[16] When questioned about the termination notice, Mr. Tom Garcia stated he put the notice inside the door and did not mail anything.[17]

Defendant's husband, Acedo Carrera, testified for the defense and contradicted Tom Garcia's testimony. Mr. Carrera said Mr. Tom Garcia did not ask to fix the water meter and

[3] *Id*. at 11:25–38.
[4] *Id*. at 12:10.
[5] *Id*. at11:40–12:10; and 12:28.
[6] *Id*. at 12:34–45.
[7] *Id*. at 12:51; 14:06–19; 15:30 and 16:05–11.
[8] *Id*. at 38:08–26.
[9] *Id*. at 31:57.
[10] *Id*. at 32:06 and 34:52.
[11] *Id*. at 32:25.
[12] *Id*. at Disc 2, 2:42.
[13] *Id*. at Disc 1, 33:07–38.
[14] *Id*. at 43:42–43:47.
[15] *Id*. at 45:39–46:32.
[16] *Id*. at 46:44–46.
[17] *Id*. at 49:04–36.

never talked with him in the morning. Mr. Carrera said he frequently left for work at 6:00 A.M. Mr. Carrera admitted he had a key to the lock on the property.[18] In contrast, Mr. Felipe Burke rebutted Mr. Carrera's testimony and said he was with Tom Garcia when Mr. Garcia spoke with Mr. Carrera.[19] He said the conversation occurred on a Monday or Tuesday.

Plaintiff sent Defendant a termination of rental letter on November 11, 2011.[20] The notice states there is a material and irreparable breach and says the tenant has committed an act "that constitutes a Material and Irreparable Violation as that term is used in ARS 33–1476 (D) (3)". The specific violation listed is: "Tenant has refused the landlord access to the space for the purpose of replacing water meter, and the landlord, pursuant to ARS 33–1484(A) is terminating the rental agreement." The Defendant was notified her tenancy was terminated immediately. The parties dispute if the alleged violation is governed by A.R.S. § 33–1476—as Defendant contends—or A.R.S. § 33–1484—as Plaintiff asserts. Defendant also asserts Plaintiff's actions were retaliatory as Defendant had filed a complaint against Plaintiff within the 6 month period before she received the termination notice.[21] At the trial's conclusion, the trial court found in Plaintiff's favor.

Defendant filed a timely appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUES:

A. Was Plaintiff Required to Include the Specific Grounds for the Notice of Termination

Defendant alleges Plaintiff failed to properly serve her with the reasons for terminating her tenancy and asserts the action is governed by A.R.S. § 33–1491 (C) which requires:

> The landlord of a mobile home park shall specify the reason for the termination of any tenancy in such mobile home park. The reason relied on for termination shall be set forth with specific facts, so that the date, place and circumstances concerning the reason for termination can be determined. Reference to or recital of the language of this chapter, or both, is not sufficient compliance with this subsection.

This Court notes Defendant is relying on a subsection of the statute referring to prohibiting retaliatory conduct. Plaintiff asserted its conduct was (1) lawful and (2) not barred by statute and (3) Defendant's position does not apply to the current situation. This case presented the trial court—and this Court— with contradictory facts as well as opposing legal theories. On

[18] *Id* at Disc 2, at 6:19.
[19] *Id*. at 10:38.
[20] Plaintiff's Exhibit 2.
[21] State of Arizona Department of Building and Fire Safety Petition for Hearing by the Mobile Home Parks Administrative Law Judge re Case # LTA 10–11/007.

appeal, this Court must review the trial court's actions in the light most favorable to supporting the trial court's decision. In *Globe American Cas. Co. v. Lyons*, 131 Ariz. 337, 340, 641 P.2d 251, 254 (Ct. App. 1982) the Court said:

> In reviewing the record, we consider the evidence in the light most favorable to upholding the judgment.

The Court also said:

> In matters of factual dispute this court defers to the trial court unless the trial court's finding is clearly erroneous.

Globe American Cas. Co. v. Lyons, 131 Ariz. at 343, 641 P.2d at 257. See also *Federoff v. Pioneer Title & Trust Co. of Arizona*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990) holding:

> Our duty begins and ends with inquiring whether the trial court had before it evidence that might reasonably support its action when viewed in the light most favorable to sustaining the findings. The trial judge makes factual determinations in the first instance, and we will sustain these findings unless they are clearly erroneous or unsupported by any credible evidence.

*Id. [*citations omitted.] The Court will review the legal determinations de novo. *Guertin v. Dixon*, 177 Ariz. 40, 42, 864 P.2d 1072, 1074 (Ct. App. 1993).

Plaintiff's action resulted from Defendant's refusal to allow Plaintiff access to the real property Defendant rented and thereby prohibited Plaintiff from installing the water meter. A.R.S. § 33–1484 (A) provides the landlord may terminate the rental agreement if the tenant refuses to allow lawful access. This statute, unlike A.R.S. § 33–1476, does not provide for a cure period. Here, Plaintiff contended Defendant refused to allow lawful access to the property so Plaintiff could have a water meter installed. Although Defendant asserted the gate was locked with a lock owned by SRP, Defendant—and her husband— admitted they each had the ability to unlock the gate and to provide access. Additionally, although Defendant and her husband testified they had never been directly requested to provide access to the side yard, Plaintiff's witnesses—the property manager and both maintenance workers—testified about specific contacts with Defendant and her husband requesting access to the property.

Defendant argued the action should have been governed by A.R.S. § 33–1476 a general statute governing the termination or nonrenewal of a lease. A.R.S. § 33–1476 requires the tenant be given specific reasons for the termination or nonrenewal of a tenancy and mandates that a landlord may not terminate a lease without good cause. The statute also (1) includes the requirement that the landlord deliver a written notice to the tenant "specifying the acts and omissions constituting the breach" and (2) provides a cure period.

This Court first notes A.R.S. § 33–1484 is more specific than A.R.S. § 33–1476. Under the rules of statutory construction, when both a specific and a general statute relate to the same subject or have the same general purpose, the statutes should be construed as though they are one law. *Ruth Fisher Elementary School Dist. v. Buckeye Union High School District*, 202 Ariz. 107, 41 P.3d 645 ¶ 12 (Ct. App. 2002). Where the provisions are inconsistent, however, the specific statute controls. In *Desert Waters, Inc. v. Superior Court In and For Pima County*, 91 Ariz. 163, 171, 370 P.2d 652, 657 (1962) our Supreme Court stated:

> In so far as the provisions of a special statute are inconsistent with those of a general statute on the same subject, the special statute will control.

A.R.S. § 33–1484 (A) has little in the way of case law to guide the Court. However, the plain meaning of the statute is to allow the landlord to terminate the rental agreement if a tenant refuses to allow access. The statute states:

> If the tenant refuses to allow lawful access, the landlord may terminate the rental agreement and may recover actual damages.

Where the words of a statute are clear, there is no need to resort to statutory construction as the statutory language is the most reliable indication of the statute's meaning. *Industrial Commission of Arizona v. Old Republic Ins. Co*., 223 Ariz. 75, 219 P.3d 285 ¶ ¶ 6–7 (Ct. App. 2010). Here, the statute clearly indicates the landlord has the right to end the lease agreement.

The next question is whether the right to end the lease agreement under A.R.S. § 33–1484 (A) was meant to be a right separate and apart from the general requirements of A.R.S. § 33–1476 which generally provides the mechanism for ending a lease. A.R.S. § 33–1476 provides the landlord shall specify the reasons for terminating a tenancy and also states a landlord may not terminate a tenancy unless there is "good cause". The statute—A.R.S. § 33–1476 (B)—lists four categories of activities which indicate good cause. The four categories are:

1. Noncompliance with the rental agreement's terms
2. Nonpayment of rent
3. Change in the use of the land
4. Repeated violations of a provision of the act and a pattern of noncompliance with the provisions of the law.

The statute then mandates the procedure the landlord must follow in order to terminate—or fail to renew—the rental agreement. Interestingly, failure to allow access to the property is not included in these four categories. This Court believes the Legislature included a separate specific statute dealing with access to the property to allow landlords the ability to recover their property should a tenant refuse access. If the Legislature wanted to make the access statute conditional on the requirements of A.R.S.§ 33–1476 the Legislature could have added an additional category to

A.R.S. § 33–1476 (B). Instead, at the time it created the statutory scheme in 1975, the Legislature included a separate and specific law about access.

Defendant maintains the underlying problem has been fixed and Plaintiff is now able to have access to the property. This, however, does not excuse the original violation. Because the specific statute—A.R.S. § 33–1484 (A)—governs and does not provide for a cure period—or even a cure—Defendant's argument (that the problem has been fixed) fails.

Defendant argued Plaintiff's actions were retaliatory. It is clear Defendant made claims against Plaintiff and A.R.S. § 33–1491 creates a presumption of retaliation if the tenant (1) filed an action against the landlord; (2) complained to the landlord about a violation; (3) organized or became a member of a tenant's union; or (4) complained to a government agency about a health or safety violation within the six month period before the landlord filed the action. While Defendant's earlier complaints against Plaintiff puts Plaintiff into the class of people to be protected by this statute, the presumption of retaliatory action is not irrebutable. The statute provides the landlord must specify the reason for the termination and set forth the reason with specific facts so that the date, place and circumstances can be determined. Plaintiff provided this information. Indeed, Plaintiff included a violation notice informing Defendant: "Tenant has refused the landlord access to the space for the purpose of replacing water meter, and the landlord, pursuant to A.R.S. § 33–1484 (A) is terminating the rental agreement." There is no evidence demonstrating Defendant was unaware of the date of this refusal. The circumstances and place are specifically listed in the notice. Plaintiff specifically explained the reason for the action as Defendant's failure to provide requested access to the gated area so Plaintiff could install the water meter Plaintiff told all residents would be installed. While Defendant did file complaints, Defendant did not demonstrate—or even indicate—the landlord's action was in response to any of Defendant's complaints. Indeed, the reason for Plaintiff's claim was Defendant's failure to allow Plaintiff access to the property when Defendant had the ability to do so. In so ruling, the trial court believed the testimony presented by Plaintiff's witnesses and chose to disbelieve Defendant's testimony and assertions about (1) the lock and (2) her suggested or implied inability to access this portion of the rental property. Although Defendant argued retaliatory conduct, the trial court found the presumption was rebutted. Because Defendant knowingly failed to provide Plaintiff with access to the property when Defendant had the ability to do so, this Court concurs with the trial court's determination Plaintiff did not act in a retaliatory manner.

B. Could Any Material and Irreparable Breach of the Lease Agreement Be Ameliorated.

Although Plaintiff referred to A.R.S. § 33–1476 in the complaint, Plaintiff also specifically described the violation as Defendant's failure to allow access so Plaintiff could replace the water meter. This Court agrees Plaintiff failed to demonstrate any material and irreparable breach according to A.R.S. § 33–1476 (D) (3). However, because Plaintiff demonstrated a violation of A.R.S. § 33–1484 and because this Court believes A.R.S. § 33–1484

governs this action, this Court determines there is no need for Plaintiff to demonstrate a material and irreparable breach of the lease under A.R.S. § 33–1476 (D) (3). Even though Defendant alleged the violation could be ameliorated, A.R.S. § 33–1484 does not allow the violation to be corrected.

C. Did the Landlord Have a Right To Access The Property.

Defendant alleges the area behind the locked gate should be considered as part of the mobile home but provides no authority as to why the land would be considered part of a structure. Indeed, A.R.S. § 33–1409 (14) specifically defines a mobile home as a structure and a mobile home space as the parcel of land where the mobile home sits. Because Plaintiff sought access to the real estate and not to the structure, Defendant's argument fails.

D. *Was Defendant Properly Served with the Notice of the Violation*

Lastly, Defendant contends Plaintiff failed to properly serve her with the action. In support of her contention, Defendant cites A.R.S. § 33–1412 (B). According to section B, a tenant receives notice when it is (1) delivered in hand to the tenant or (2) mailed by "registered or certified mail to him at the place held out by him as the place for receipt of the communication, or, in the absence of such designation, to his last known place of residence other than the landlord's mobile home space, if known." In this case, the complaint was both posted and mailed certified return receipt to Defendant at her address. According to the Affidavit of Service, the process server—Jeffrey J. Pollock—both posted a copy of the Summons and Complaint and mailed a copy of the documents by certified mail, return receipt requested on November 17, 2010. Defendant responded with a letter dated November 18, 2010. Clearly, Defendant was apprised of the action and equally clearly, was served according to the mandates of A.R.S. § 33–1412 (B). While Mr. Tom Garcia may only have posted the notice—as Defendant maintains in her appellate memorandum[22]—the affidavit of the process server demonstrates she was properly served.

III. CONCLUSION.

Because this Court concludes the trial court correctly determined A.R.S. § 33–1484 is the controlling statute, and because the trial court determined Plaintiff's witnesses were more believable—a determination left to the trial court's discretion— this Court finds the trial court did not err in determining Defendant was guilty of a forcible detained. Based on the foregoing, this Court concludes the Arcadia Biltmore Justice Court did not err.

IT IS THEREFORE ORDERED affirming the judgment of the Arcadia Biltmore Justice Court.

IT IS FURTHER ORDERED remanding this matter to the Arcadia Biltmore Justice Court for all further appropriate proceedings.

[22] Appellant's Memorandum, p. 4, ll. 13–21.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court 1004020110900